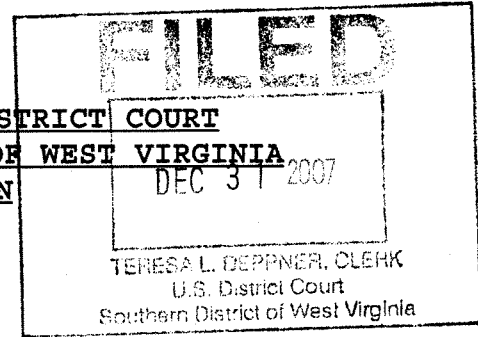


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON



JESSE BARKER and SINDA BARKER
husband and wife,
Plaintiffs,

v.

CIVIL ACTION NO.: 2: 07-0966

STATE FARM AUTOMOBILE MUTUAL
INSURANCE COMPANY,

Defendant.

NOTICE OF REMOVAL OF ACTION

Comes now the defendant, State Farm Mutual Automobile Insurance Company, improperly denominated in plaintiffs' complaint as State Farm Automobile Mutual Insurance Company, and pursuant to 28 U.S.C. §1446, gives notice of the removal of the above captioned matter from the Circuit Court of Kanawha County, West Virginia, to the United States District Court for the Southern District of West Virginia.

On November 29, 2007, plaintiffs filed a complaint styled "*Jesse Barker and Sinda Barker, husband and wife, Plaintiffs, v. State Farm Automobile Mutual Insurance Company, Defendant*", bearing Civil Action No. 07-C-2557, in the Circuit Court of Kanawha County, West Virginia. (See attached Exhibit A). The summons directed to State Farm Mutual Automobile Insurance Company was issued on November 29, 2007. (See attached Exhibit B). The Secretary of State accepted service of the summons and

complaint on behalf of State Farm Mutual Automobile Insurance Company on November 29, 2007. A copy of the Docket Sheet from the Circuit Court of Kanawha County, West Virginia, is attached hereto as Exhibit C.

This action is removable pursuant to 28 U.S.C. §1332(a), as this is a civil action wherein the matter in controversy exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and it is between citizens of different states, both presently and at the time the action was filed in the Circuit Court of Kanawha County, West Virginia.

In the *ad damnum* clause, plaintiffs did not plead a specific amount in controversy. Likewise, plaintiffs did not file, contemporaneously with the complaint, a formal, binding pre-removal stipulation, signed by plaintiffs and counsel, limiting the amount in controversy to less than \$75,000.00. *McCoy v. Erie Insurance Company*, 147 F. Supp.2d 481, 485 (S.D.W. Va. 2001).

However, plaintiffs each seek underinsured motorist coverage limits from a State Farm Mutual Automobile Insurance Company automobile liability insurance policy issued to plaintiffs. (Complaint, ¶ 11). The State Farm Mutual Automobile Insurance Company policy issued to plaintiffs provides underinsured motorist coverage with liability limits of

\$100,000.00 per person, \$300,000.00 per accident and \$10,000.00 for property damage. Thus, each plaintiff is seeking \$100,000.00 in underinsured motorist coverage benefits. (Complaint, ¶ 11).

In addition, although State Farm Mutual Automobile Insurance Company does not agree that plaintiffs have valid claims for violation of the Unfair Trade Practices Act or common law bad faith, plaintiffs have pled such claims and seek punitive damages. A claim for punitive damages "inevitably inflates a plaintiff's potential recovery." *Bryant v. Wal-Mart Stores East, Inc.*, 117 F. Supp.2d 555, 556 (S.D.W. Va. 2000). Notwithstanding plaintiffs' failure to plead a specific monetary amount, an examination of the relief sought in the complaint reveals, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *McCoy v. Erie Insurance Company*, *supra*, 147 F. Supp.2d at 485. See also *Weddington v. Ford Motor Credit Company*, 59 F. Supp.2d 578 (S.D.W. Va. 1999); *Sayre v. Potts*, 32 F. Supp.2d 881 (S.D.W. Va. 1999).

Plaintiffs are citizens of the State of West Virginia. State Farm Mutual Automobile Insurance Company is a corporation, incorporated in the State of Illinois, with its principal place of business in the State of Illinois, particularly, Bloomington,

Illinois. Therefore, complete diversity of citizenship exists among the parties.

Your defendant, State Farm Mutual Automobile Insurance Company, therefore asserts that this Court has original jurisdiction of this action pursuant to 28 U.S.C. §1332(a) and this action constitutes a matter, pursuant to 28 U.S.C. §1441(a), which may be removed by the defendant to this Court, as this Honorable Court has original jurisdiction.

WHEREFORE, for the foregoing reasons, your defendant, State Farm Mutual Automobile Insurance Company, respectfully requests that the action now pending against it, filed by Jesse Barker and Sinda Barker in the Circuit Court of Kanawha County, West Virginia, be removed to this Honorable Court.

s/R. Carter Elkins

Of Counsel for Defendant State Farm
Mutual Automobile Insurance Company

R. Carter Elkins
W. Va. State Bar I.D. 1116
Laura L. Gray
W. Va. State Bar I.D. 5240
W. Joseph Bronosky
W. Va. State Bar No. 6051

Campbell Woods, PLLC
517 Ninth Street, Suite 1000
Post Office Box 1835
Huntington, West Virginia 25719-1835
(304) 529-2391
relkins@campbellwoods.com

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JESSE BARKER and SINDA BARKER
husband and wife,
Plaintiffs,

v.

CIVIL ACTION NO.: 2: _____

STATE FARM AUTOMOBILE MUTUAL
INSURANCE COMPANY,

Defendant.

CERTIFICATE OF SERVICE

The undersigned, of counsel for defendant, State Farm Mutual Automobile Insurance Company, does hereby certify that the foregoing Notice of Removal of Action was this day served upon the following by mailing a true copy of the same this date, postage prepaid, to:

C. Michael Bee, Esquire
Douglas A. Spencer, Esquire
Hill, Peterson, Carper, Bee & Deitzler
Northgate Business Park
500 Tracy Way
Charleston, West Virginia 25311-1555

Done this 31st day of December, 2007.

s/R. Carter Elkins

Of Counsel for Defendant State Farm
Mutual Automobile Insurance Company

R. Carter Elkins
W. Va. State Bar I.D. 1116
Laura L. Gray
W. Va. State Bar I.D. 5240
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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Jesse Barker and Sinda Barker,
husband and wife,

Plaintiff,

vs.

State Farm Automobile Mutual
Insurance Company,

Defendant.

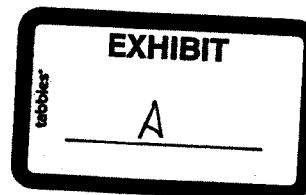
CIVIL ACTION NO.:
JUDGE:

07-C-2557
Stucky

COMPLAINT

For their cause of action, plaintiffs, Jesse Barker and Sinda Barker, by counsel, C. Michael Bee, Douglas A. Spencer, and the law firm of HILL, PETERSON, CARPER, BEE & DEITZLER, P.L.L.C., state and aver as follows:

1. That Jesse Barker and Sinda Barker (hereinafter sometimes referred to as "plaintiffs") are a married couple and at all relevant times herein stated were citizens and residents of Ripley, Jackson County, West Virginia.
2. That Jesse Barker and Sinda Barker purchased their State Farm Automobile Mutual Insurance Company policy from Jim Pritt in Sissonville, Kanawha County, West Virginia.
3. That State Farm Automobile Mutual Insurance Company hereinafter referred to as State Farm, is an Illinois corporation, is and at all relevant times herein stated, was the underinsurance carrier for plaintiffs and is an insurance company licensed to do business in the state of West Virginia.



FACTS OF UNDERLYING WRECK

4. On or about August 8, 2003, plaintiff Sinda Barker was a passenger in a vehicle being driven by plaintiff Jesse Barker, traveling in a southerly direction on SC 291, also known as North Pleasantburg Drive; that on the aforesaid day and time the Charles C. Dean was the operator of a 1993 Nissan, owned by the defendant Career II Auto Sale, LLC, also traveling south on SC 291 directly behind the vehicle being driven by Jesse Barker; that on the aforesaid day and time as the Barker vehicle was properly stopped for a traffic light at the intersection of US 291 and Rutherford Road, Charles C. Dean traveling too fast for conditions, did strike the rear end of the vehicle in which the plaintiffs were passengers, resulting in a collision of the vehicles, thereby causing the plaintiffs to sustain serious, severe and painful injuries more particularly set forth later herein.

**PLAINTIFF'S RELATIONSHIP WITH STATE FARM
AUTOMOBILE MUTUAL INSURANCE COMPANY**

5. At the time of the collision complained of above, plaintiff maintained automobile insurance through State Farm Automobile Mutual Insurance Company.

6. Plaintiffs first party insurance with State Farm Automobile Mutual Insurance Company consisted of liability coverage, underinsurance coverage, uninsured coverage and medical payments coverage.

7. Plaintiffs initially procured insurance through State Farm Automobile Mutual Insurance Company in or about the early 1980's.

8. Plaintiffs maintained insurance with State Farm Automobile Mutual Insurance Company from the early 1980's through the Spring of 2007. Approximately 27 years.

9. On March 23, 2007, plaintiffs settled with the liability carrier for defendants, Charles C. Dean, Brian Knight, individually, and Career II Auto Sales, LLC, Columbia Insurance Company and National Indemnity Insurance Company for policy limits.

10. State Farm Automobile Mutual Insurance Company approved of the settlement with the tortfeasors and waived any rights to subrogation for any monies it had paid on behalf of its first party insureds, Jesse and Sinda Barker, the plaintiffs.

11. Plaintiffs have demanded their policy limits of underinsurance coverage to settle their claim.

12. Defendant State Farm Automobile Mutual Insurance Company has refused to tender the policy limits of their underinsurance coverage to the plaintiffs for the injuries they sustained in the automobile collision complained of above.

**COUNT I - NEGLIGENCE OF CHARLES C. DEAN, BRIAN KNIGHT
AND CAREER II AUTO SALES, LLC**

13. As a direct and proximate result of the aforementioned negligence of Charles C. Dean, Brian Knight and Career II Auto Sales, LLC, plaintiffs were caused to sustain permanent and debilitating injuries from the trauma of the vehicular collision referenced above.

14. As a direct and proximate result of Charles C. Dean, Brian Knight and Career II Auto Sales, LLC, negligence, plaintiffs have suffered the following damages:

- a. Past and future pain and suffering of mind and body.
- b. Past and future medical treatment and expense.
- c. Past and future lost enjoyment of life.

15. Plaintiffs have exhausted all liability coverage available to compensate them for injuries sustained in the collision referenced above.

COUNT II - BREACH OF CONTRACT

16. Defendant State Farm Automobile Mutual Insurance Company approved such settlement and waived the rights to subrogation to monies it may have paid on behalf of its first party insureds.

17. Defendant's have refused to offer the policy limits of the plaintiffs' underinsurance coverage to settle the first party underinsurance claim of the plaintiffs. The defendants refusal is a breach of contract with the plaintiffs. Plaintiffs seek damages as a result of this breach of contract, for attorneys fees, costs, economic loss, aggravation and inconvenience and all other foreseeable consequential damages.

18. Plaintiffs damages from the wreck of August 8, 2003, exceed the liability coverage of the tortfeasors.

19. Accordingly, plaintiffs seek the remainder of their damages for injuries from their underinsurance carrier, that being State Farm.

COUNT III - FIRST PARTY VIOLATIONS OF THE UFTPA

20. Defendant's refusal to make a good faith offer and settlement is a violation of the Unfair Trade Practices Act.

21. Defendant is liable to plaintiffs for their first party violation of the UFTPA. Accordingly, any damages allowable by law and not awarded and/or requested under Counts I and II are hereby requested and to the extent possible punitive damages are requested against defendant State Farm for its violation of the Unfair Trade Practices Act.

COUNT IV - COMMON LAW BAD FAITH

22. State Farm's negotiation tactics and refusal to offer any monies to settle the first party underinsurance claim of the plaintiffs is common law bad faith. Plaintiffs have been injured by defendant's bad faith.

WHEREFORE, plaintiffs demand judgment against the defendant for compensatory and punitive damages in an amount to be determined by a jury, attorneys fees, costs incurred prosecuting this claim for prejudgment and post judgment interest, and for such other and further relief as this Court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY.

By Counsel



C. Michael Bee (W.Va. State Bar #290)
Douglas A. Spencer (W.Va. State Bar #9369)
HILL, PETERSON, CARPER, BEE & DEITZLER
NorthGate Business Park, 500 Tracy Way
Charleston, West Virginia 25311-1555
(304) 345-5667
Counsel for Plaintiffs

00236078

CIVIL CASE INFORMATION SHEET: CIVIL

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

I. CASE STYLE:

Plaintiff(s)

JESSE BARKER and
SINDA BARKER, husband and wife,

CASE NUMBER:

07-C-2557

Stucky

Defendant(s)Days to AnswerType of Service

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

c/o David Bonenfant
1500 State Farm Boulevard
Charlottesville, VA 22906-0001

30

Secretary of State

PLAINTIFF: Jesse Barker and Sinda Barker, husband and wife
DEFENDANT: State Farm Automobile Mutual Insurance Company

CASE NUMBER:

II. TYPE OF CASE:

☒ General Civil☐ Mass Tort Litigation☐ Guardianship/Conservatorship☐ Adoption☐ Mental Health☐ Administrative Agency Appeal☐ Appeal from Magistrate☐ Miscellaneous Civil Petition☐ Other (specify):III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): 06/01/08

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ Yes ☒ No

Attorney Names: C. Michael Bee (WV State Bar #290) and
Douglas A. Spencer (WV State Bar #9369)

Representing:

☒ Plaintiff

Firm: HILL, PETERSON, CARPER, BEE & DEITZLER, P.L.L.C.

Address: 500 Tracy Way

Charleston, WV 25311-1261

☐ Defendant☐ Cross-
Complainant☐ Cross-
Defendant

Telephone: 304-345-5667

Dated: November 29, 2007

Signature

00236400

PYMT Type K
Rcpt # 4232516 \$145 X \$135
Iss. Sum. + cc No Sum. Iss
X Ret. to Atty. \$20cm X
Mailed CM/RM \$5 clk X
Mailed to sos w/ck#
Sent to w/ck#

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA



Betty Ireland
Secretary of State

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305
Telephone: 304-558-6000
Toll Free: 866-SOS-VOTE
www.wvsos.com

LEGAL NOTICE

Cathy Gatson, Circuit Clerk
Kanawha County Courthouse
111 Court Street
Charleston, WV 25301-2500

December 11, 2007

Civil Action: 07-C-2557

I am enclosing:

- | | |
|--|--|
| <input type="checkbox"/> summons | <input checked="" type="checkbox"/> original |
| <input type="checkbox"/> notice | <input type="checkbox"/> affidavit |
| <input type="checkbox"/> order | <input type="checkbox"/> answer |
| <input type="checkbox"/> petition | <input type="checkbox"/> cross-claim |
| <input type="checkbox"/> motion | <input type="checkbox"/> counterclaim |
| <input type="checkbox"/> interrogatories | <input type="checkbox"/> request |
| <input type="checkbox"/> suggestions | <input checked="" type="checkbox"/> certified return receipt |
| <input type="checkbox"/> subpoena duces tecum | <input type="checkbox"/> request for production |
| <input type="checkbox"/> summons and complaint | <input type="checkbox"/> request for admissions |
| <input type="checkbox"/> summons returned from post office | <input type="checkbox"/> no return from post office |
| <input type="checkbox"/> summons and amended complaint | <input type="checkbox"/> notice of mechanic's lien |
| <input type="checkbox"/> 3rd party summons and complaint | <input type="checkbox"/> suggestee execution |

which was served on the Secretary at the State Capitol in her capacity as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of State Farm Mutual Automobile Insurance Company.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on your behalf as your attorney-in-fact. Please address any questions about these documents directly to the court or to the plaintiff's attorney, shown in the enclosed paper. Please do not call the Secretary of State's office.

Sincerely,

Penney Barker

Penney Barker, Manager
Business & Licensing Division

SUMMONS

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Jesse Barker and Sinda Barker,
husband and wife,

Plaintiff,

vs.

State Farm Automobile Mutual
Insurance Company,

Defendant.

To the above-named Defendant:

CIVIL ACTION NO.: 07-C-2557

JUDGE:

Stacky

Underinsured Motorist Carrier
State Farm Mutual Automobile Insurance
Company
c/o David Bonenfant
1500 State Farm Boulevard
Charlottesville, VA 22906-0001

2. Article Number		7160 3901 9845 0895 0313	
3. Service Type		CERTIFIED MAIL	
4. Restricted Delivery? (Extra Fee)		<input type="checkbox"/> Yes	
1. Article Addressed to:			
07-C-2557			
State Farm Mutual Automobile Insurance Company			
David Bonenfant			
1500 State Farm Blvd.			
Charlottesville, VA 22909-0001			

COMPLETE THIS SECTION ON DELIVERY	
A. Received By (Please Print Clearly)	B. Date of Delivery
C. Signature	
X <i>Al Foster</i>	12/6/07
D. Is delivery address different from item 1? If YES, enter delivery address below.	
<input type="checkbox"/> Yes	
<input type="checkbox"/> No	

OF WEST VIRGINIA, you are hereby summoned and
 pier, plaintiff's attorney, whose address is HILL,
 P.L.L.C., 500 Tracy Way, Charleston, WV, 25311-1261,
 terclaim you may have, to the Complaint filed against
 ue copy of which is herewith delivered to you. You are
 0 days after service of this Summons upon you,
 ail to do so, judgment by default will be taken against you
 t, and you will be thereafter barred for asserting in
 that must be asserted by counterclaim in the above-styled

Cathy Watson
Clerk of Court By *C. Wood*

SUMMONS

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**Jesse Barker and Sinda Barker,
husband and wife,**

Plaintiff,

vs.

**State Farm Automobile Mutual
Insurance Company,**

Defendant.

**CIVIL ACTION NO.:
JUDGE:**

07-C-2557
Stucky

To the above-named Defendant:

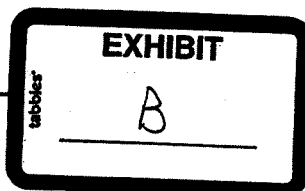
**Underinsured Motorist Carrier
State Farm Mutual Automobile Insurance
Company
c/o David Bonenfant
1500 State Farm Boulevard
Charlottesville, VA 22906-0001**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Douglas A. Spencer, plaintiff's attorney, whose address is HILL, PETERSON, CARPER, BEE & DEITZLER, P.L.L.C., 500 Tracy Way, Charleston, WV, 25311-1261, and Answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your Answer within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint, and you will be thereafter barred for asserting in another action any claim you may have that must be asserted by counterclaim in the above-styled civil action.

Dated: 11-29-07

Cathy L. Watson
Clerk of Court By CW

00236395



CASE 07-C-2557

KANAWHA

JESSE BARKER & SINDA BARKER vs. STATE FARM AUTOMOBILE MUTUAL I

LINE	DATE	ACTION
1	11/29/07	# ISSUED SUM & 2 CPYS; F FEE; RCPT 423256; \$145.00; CASE INFO
2		# SHEET; COMPLAINT
3	12/13/07	# LET FR SS DTD 12/11/07; SUM W/RET (11/29/07 SS) AS TO STATE
4		# FARM MUTUAL AUTOMOBILE INS. CO. W/RMR

